HEALTH AFFAIRS

TRICARE Management Activity

TRICARE Health Insurance Portability & Accountability Act (HIPAA) Project

HIPAA Privacy Implementation

HIPAA Privacy Information Papers can be found at www.tricare.osd.mil/HIPAA

Region 1 Presentation 21MAY 2002

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Objectives

1. **Familiarize the MHS with the new HIPAA legislation**

2. **Explain the HIPAA Privacy Rule**

3. **Explain how the MHS is responding to the legislation**

4. **Outline MHS responsibilities**

HIPAA
HIPAA Legislation

Health Insurance Portability and Accountability Act (HIPAA) Public Law 104-191 enacted August 21, 1996

Purpose:

- **improve portability & continuity of health insurance coverage**
- **improve access to long term care services and coverage**
- **simplify the administration of health care**

Secretary HHS to provide recommendations and privacy regulations if Congress failed to pass privacy legislation by August 21, 1998

Compliance within two years of effective dates of final rules

HIPAA PRIVACY
Components of the Rule

Final Rule Published: December 2000
Rule Effective: April 2001
Compliance Date: April 14, 2003

- **Consumer control = Rights for individual patient**
- **Boundaries on use and release**
- **Ensuring security**
- **Accountability and penalties**
- **Balancing public responsibility with protections**
- **Preserving strong state laws**

HIPAA PRIVACY
In A Nutshell

Initial rule **stated that a covered entity may not use or disclose protected health information (PHI) unless**

- **the patient agrees to the use or disclosure, or**
- **the use or disclosure is specifically required or permitted by the HIPAA regulations**

In March 2002, HHS *proposed changes* that included elimination of the requirement for patient consent for this purpose. Under the proposal

- **a covered entity need only notify patients about their rights and the entity's practices**
- **applies only to consent for uses and disclosures for treatment, payment and health care operations (TPO)**
- **authorizations are still required for use & disclosure of information for non-TPO purposes**

HIPAA PRIVACY
Acronyms & Definitions

IIHI – Individually Identifiable Health Information

PHI – Protected Health Information

TPO – Treatment, Payment and Healthcare Operations

Treatment – provision, coordination, consultation and referral

Payment – billing, reimbursement, eligibility, utilization review

Healthcare Operations – QA, credentialing, legal, medical review, auditing, and regular business and management

Use – Internal utilization or sharing IIHI

Disclosure – External release of IIHI

HIPAA PRIVACY
Who & What is Covered?

Who? Covered entities (CEs) are health care providers who transmit health information in (standard) electronic transactions

- **Health Plans, e.g., TRICARE**
- **Health care clearinghouses, e.g., companies that perform electronic billing on behalf of MTFs**
- **Business associates, e.g., managed care support contractors**

What? Protected health information (PHI)

- **Individually identifiable health information including demographics, in electronic, paper or oral medium**
- **Held by covered entities or their business associates**

HIPAA PRIVACY
BA Contracts - Required Terms

- **Use and disclose PHI only as authorized in the contract**
  - **No further uses and disclosures**
  - **Such uses and disclosures may not exceed what the covered entity may do under HIPAA**
- **Implement appropriate privacy and security safeguards**
- **Report unauthorized disclosures to covered entity**
- **Meet all patient rights provisions**
  - **Make available PHI under access, amendment and accounting of disclosures rights**
  - **Incorporate any amendments to PHI**

- Proposed Contract Compliance Date Extended to April 2004 -

HIPAA PRIVACY
BA Contracts - Required Terms (cont'd)

- **Make available its records to HHS for determination of covered entity's compliance**
- **Return/destroy PHI upon termination of arrangement, if feasible**
- **Ensure agents and subcontractors comply**
- **Allow termination by covered entities if BA is found to be non-compliant**

- Proposed Contract Compliance Date Extended to April 2004 -

HIPAA PRIVACY
Notice of Privacy Practices

Includes:

1. **Uses and disclosure of PHI for TPO**
2. **Individual's rights to access, control and request restrictions on use**
3. **Covered entities' duties**
4. **Complaints procedures**
5. **Contact information**
6. **Effective date**

HIPAA PRIVACY

Treatment, Payment and Health Care Operations (TPO)

- **TREATMENT:** Includes provision, coordination or management of healthcare and related services and extends to consultation between providers or the referral of a patient from one provider to another.
- **PAYMENT:** Applies to activities including obtaining premiums, reimbursement, eligibility and coverage determinations, billing and claims management and utilization review activities.
- **HEALTH CARE OPERATIONS:** Includes QA, health improvement, education, training, contracting, medical review, legal services, auditing, business planning and development, management and general administrative activities.

HIPAA PRIVACY
Authorization

- **Covered entities must obtain an individual's authorization before using or disclosing PHI for purposes *other than treatment, payment, or healthcare operations***

- **Covered entities cannot condition the provision of treatment, payment, enrollment or eligibility upon an authorization**

- **Individuals have the right to use an**

HIPAA PRIVACY

Parental Access

State law governs disclosures to parents

In cases where state law is silent or unclear, the proposed rule modifications would preserve state law and professional practice by permitting a health care provider to use discretion to provide or deny a parent access to such records as long as that decision is consistent with state or other law.

HIPAA PRIVACY
Permitted Uses & Disclosures

For the permitted uses and disclosures listed below, a patient's opportunity to agree or object is not required.

- **as required by law**
- **avert serious threats to health or safety**
- **specialized government functions**
- **judicial and administrative proceedings**
- **medical facility patient directories**
- **cadaver organ, eye or tissue donation purposes**
- **victims of abuse, neglect or domestic violence**
- **workers' compensati**
- **research purposes**
- **public health activiti**
- **health oversight acti**
- **about decedents**
- **law enforcement purp**

HIPAA PRIVACY
Minimum Necessary

- **"Role-based" access limits**
- **Standard protocols for routine & recurring uses and disclosures**
- **Review each non-routine disclosure**
- **May rely on judgment of requestor if**
  - **public official for permitted disclosure**
  - **covered entity**
  - **professional within covered entity**

HIPAA PRIVACY
Proposed Rule Changes (March 2002)

- Eliminates signed consent requirement
- Requires patient signature acknowledging receipt of Notice of Privacy Practices
- Clarifies
  - Uses and disclosures of PHI requiring authorization
  - Minimum necessary rule and its application to oral communications
  - Parental access and state law
  - Uses and disclosures of PHI for marketing
  - Uses and disclosures of PHI for research
- Extends business associate contract compliance date to April 2004

HIPAA PRIVACY
Requirements

- **Designate a Privacy Officer**
- **Train workforce to protect privacy**
- **Assess compliance using TMA tool**
- **Review DoD privacy regulation**
  - **Map protected health information flow**
  - **Conduct gap analysis & adjust policies/procedures**
  - **Introduce Notice of Privacy Practices**
  - **Institute authorization form**
  - **Establish patient privacy complaint and inquiry procedure**

HIPAA PRIVACY
Privacy Officer

- **Oversee activities related to compliance with the HIPAA Privacy Rule**
- **Establish procedures to track access, use and disclosure of PHI**
- **Ensure adherence to MHS policies and procedures at appropriate level**
- **Train workforce**
- **Monitor business associate agreements related to privacy concerns**
- **Investigate patient complaints regarding privacy infractions**

HIPAA PRIVACY
Timeline